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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
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11 CURTIS KULIG, an individual;

12 Plaintiff,

13 v.

14 THE ALDO GROUP, INC., a Canadian
15 corporation; ALDO U.S. INC., a
16 California corporation; and DOES 2-10
17 inclusive.

18 Defendants.
19

Case No. 2:19-cv-01181 SVW(FFMx)

**PROTECTIVE ORDER PURSUANT
TO STIPULATION**

20 On stipulation of the Parties, the Court enters a Protective Order in this matter
21 as follows:

22 **1. Introduction**

23 **1.1 Purposes and Limitations**

24 Discovery in this action is likely to involve production of confidential,
25 proprietary, or private information for which special protection from public
26 disclosure and from use for any purpose other than prosecuting this litigation may
27 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
28 enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth in
5 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
6 file confidential information under seal; Civil Local Rule 79-5 sets forth the
7 procedures that must be followed and the standards that will be applied when a party
8 seeks permission from the court to file material under seal.

9 **1.2 Good Cause Statement**

10 This action is likely to involve trade secrets, customer and pricing lists and
11 other valuable proprietary information for which special protection from public
12 disclosure and from use for any purpose other than prosecution of this action is
13 warranted. Such confidential and proprietary materials and information consist of,
14 among other things, sales summaries, pricing, internal business strategies, and other
15 confidential business or financial information, or information regarding confidential
16 business practices. The confidential information at issue is generally unavailable to
17 the public and may be privileged or otherwise protected from disclosure under state
18 or federal statutes, court rules, case decisions, or common law.

19 Accordingly, to expedite the flow of information, to facilitate the prompt
20 resolution of disputes over confidentiality of discovery materials, to adequately
21 protect information the parties are entitled to keep confidential, to ensure that the
22 parties are permitted reasonable necessary uses of such material in preparation for
23 and in the conduct of trial, to address their handling at the end of the litigation, and
24 serve the ends of justice, a protective order for such information is justified in this
25 matter. It is the intent of the parties that information will not be designated as
26 confidential for tactical reasons and that nothing be so designated without a good
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1 faith belief that it has been maintained in a confidential, non-public manner, and
2 there is good cause why it should not be part of the public record of this case.

3 **2. Definitions**

4 2.1 Action: this pending federal lawsuit.

5 2.2 Challenging Party: A Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of how
8 it is generated, stored, or maintained) or tangible things that qualify for protection
9 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
10 Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
12 support staff).

13 2.5 Designating Party: A Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: All items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: A person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY”
24 Information or Items: Information (regardless of how it is generated, stored or
25 maintained) or tangible things that qualify for protection under Federal Rule of Civil
26 Procedure 26(c), and as specified above in the Good Cause Statement for which
27 disclosures to another party is likely to result in harm to the Designating Party.
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1 2.9 House Counsel: attorneys (and their staff) who are employees of a party to
2 this Action. House Counsel does not include Outside Counsel of Record or any
3 other outside counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a party
7 to this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm that
9 has appeared on behalf of that party, including support staff.

10 2.12 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.13 Producing Party: A Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.14 Professional Vendors: Persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.15 Protected Material: Any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
21 “ATTORNEY EYES ONLY.”

22 2.16 Receiving Party: A Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 **3. Scope**

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
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1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 **4. Duration**

6 Once a case proceeds to trial, all of the court-filed information to be
7 introduced that was previously designated as confidential or maintained pursuant to
8 this protective order becomes public and will be presumptively available to all
9 members of the public, including the press, unless compelling reasons supported by
10 specific factual findings to proceed otherwise are made to the trial judge in advance
11 of the trial. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81
12 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
13 produced in discovery from “compelling reasons” standard when merits-related
14 documents are part of court record). Accordingly, the terms of this protective order
15 do not extend beyond the commencement of the trial.
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17 **5. Designating Protected Material**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.
19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 protection only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
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1 purpose (e.g., to unnecessarily encumber the case development process or to
2 impose unnecessary expenses and burdens on other parties) may expose the
3 Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
10 under this Order must be clearly so designated before the material is disclosed or
11 produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents,
14 but excluding transcripts of depositions or other pretrial or trial proceedings), that
15 the Producing Party affix, at a minimum, the legend "CONFIDENTIAL,"
16 "HIGHLY CONFIDENTIAL," or "ATTORNEY EYES ONLY" (hereinafter
17 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing
19 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and
24 before the designation, all the material made available for inspection shall be
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine which
27 documents, or portions thereof, qualify for protection under this Order. Then, before
28 producing the specified documents, the Producing Party must affix the

1 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
2 portion or portions of the material on a page qualifies for protection, the Producing
3 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins).

5 (b) unless all parties agree on the record at the time the deposition testimony
6 is taken, all deposition testimony taken in this case shall be treated as Highly
7 Confidential until the expiration of the following: No later than the twenty first
8 (21st) day after the final transcript is delivered to any party or the witness. Within
9 this time twenty-one days after delivery of the final transcript, a designating party
10 may serve a Notice of Designation to all parties of record and the court reporter as
11 identifying the specific portions of the testimony transcript that are designated
12 Confidential or Highly Confidential Information, and thereafter only those portions
13 identified in the Notice of Designation shall be protected by the terms of this Order.
14 The failure to serve a timely Notice of Designation shall waive any designation of
15 deposition testimony taken in that deposition as Confidential or Highly Confidential
16 information, unless otherwise ordered by the Court or otherwise agreed in writing
17 by the parties.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 “CONFIDENTIAL.” If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable

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1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 **6. Challenging Confidentiality Designations**

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5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
10 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

11 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
12 be on the Designating Party. Frivolous challenges, and those made for an improper
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
14 parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party's designation until the Court rules on the
18 challenge.

19 **7. Access to and Use of Protected Material**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a
25 Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION). Protected Material must be stored and maintained by a Receiving
27 Party at a location and in a secure manner that ensures that access is limited to the
28 persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary for this Action and who have
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
21 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
22 not be permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the Court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may
26 be separately bound by the court reporter and may not be disclosed to anyone except
27 as permitted under this Stipulated Protective Order; and

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1 (i) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEY’S EYES ONLY” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated “HIGHLY
7 CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action and House
9 Counsel, as well as employees of said Outside Counsel of Record and House
10 Counsel to whom it is reasonably necessary to disclose the information for this
11 Action.

12 (b) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) the court and its personnel;

16 (d) court reporters and their staff;

17 (e) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information; and

22 (g) any mediator or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the parties engaged in settlement discussions.

24 Notwithstanding the terms of this section, a designation by Defendants that certain
25 materials are “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
26 ATTORNEY’S EYES ONLY” shall not preclude Plaintiff’s attorney from
27 disclosing to Plaintiff the total revenue and gross profits of a defendant as set forth
28 in such material, so long as Plaintiff’s attorney does not disclose the designated

1 document itself. This section shall also not preclude Plaintiff's attorney from
2 disclosing to Plaintiff the names of any parties identified in materials designated as
3 "HIGHLY CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S
4 EYES ONLY" and not otherwise disclosed in this Action who distributed product
5 which is alleged to infringe Plaintiff's alleged copyright.

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7 **8. Protected Material Subpoenaed or Ordered Produced in Other**
8 **Litigation**

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 "CONFIDENTIAL," that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall
13 include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to
15 issue in the other litigation that some or all the material covered by the subpoena or
16 order is subject to this Protective Order. Such notification shall include a copy of
17 this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued
19 by the Designating Party whose Protected Material may be affected. If the
20 Designating Party timely seeks a protective order, the Party served with the
21 subpoena or court order shall not produce any information designated in this action
22 as "CONFIDENTIAL" before a determination by the court from which the
23 subpoena or order issued, unless the Party has obtained the Designating Party's
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this Action
27 to disobey a lawful directive from another court.

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1 **9. A Non-Party's Protected Material Sought to be Produced in This**
2 **Litigation**

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party that
13 some or all the information requested is subject to a confidentiality agreement with a
14 Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
16 Order in this Action, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the Non-Party,
19 if requested.

20 (c) If the Non-Party fails to seek a protective order from this Court within 14
21 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the Court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this Court of its Protected Material.

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1 **10. Unauthorized Disclosure of Protected Material**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 **11. Inadvertent Production of Privileged or Otherwise Protected**
11 **Material**

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without
17 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
18 as the parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the
20 parties may incorporate their agreement in the stipulated protective order submitted
21 to the Court.
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23 **12. Miscellaneous**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order, no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue; good cause must be shown in the request to file
7 under seal. If a Party's request to file Protected Material under seal is denied by the
8 Court, then the Receiving Party may file the information in the public record unless
9 otherwise instructed by the Court.

10 **13. Final Disposition**

11 After the final disposition of this Action, within 60 days of a written request
12 by the Designating Party, each Receiving Party must return all Protected Material to
13 the Producing Party or destroy such material. As used in this subdivision, "all
14 Protected Material" includes all copies, abstracts, compilations, summaries, and any
15 other format reproducing or capturing any of the Protected Material. Whether the
16 Protected Material is returned or destroyed, the Receiving Party must submit a
17 written certification to the Producing Party if the Producing Party Requests that (1)
18 identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or any other format reproducing or
21 capturing any of the Protected Material. Notwithstanding this provision, counsel are
22 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
23 and hearing transcripts, legal memoranda, correspondence, deposition and trial
24 exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain Protected Material. Any such archival copies
26 that contain or constitute Protected Material remain subject to this Protective Order
27 as set forth in Section 4 (DURATION). There shall be no obligation, however, for
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1 Parties' counsel to search, in their company e-mail accounts or other e-mail
2 accounts that they used in connection with transmitting documents in this litigation,
3 for, and destroy, emails containing Protected Material. The Parties' counsel will
4 comply with this paragraph with regard to any documents housed in a document
5 review platform (Relativity, or similar).

6 14. Any willful violation of this Order may be punished by any and all
7 appropriate measures including, without limitation, contempt proceedings and/or
8 monetary sanctions.

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10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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12 Dated: December 18, 2019 By: /S/ FREDERICK F. MUMM
13 The Honorable Frederick Mumm
14 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California in the case of *Curtis Kulig v. The Aldo Group, Inc., et al.* Case
8 No. 2:19-cv-01181 SVW(FFMx).

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject
13 to this Stipulated Protective Order to any person or entity except in strict compliance
14 with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint

19 _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24 Date: _____

25 City and State where sworn and signed:

26 _____

27 Printed name: _____

28 Signature: _____